

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 03-30

December 12, 2002

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Case Handling Instructions for all Cases Currently Being
Coordinated by the Division of Operations-Management or a
Regional Office

This memorandum sets forth instructions for cases currently being coordinated by the Division of Operations-Management or a Regional Office. Attached as an Appendix is a concise list of coordinated cases to detach and use as an easy reference guide.

I. Armored Transport, Inc.

- A. Charges have been filed by Currency and Security Handlers Association (CASHA) in Regions 16, 20, 21, 31 and 32, alleging that Armored Transport, Inc., (ATS) has violated Sec. 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with CASHA. A consolidated complaint has issued in many of these cases and is being handled by Region 31, the lead Region for these cases.
- B. Deputy Assistant General Counsel Joseph Baniszewski is coordinating these cases. Please refer to OM 99-37 for the procedures to follow regarding the handling of these cases.

II. Beck Cases Involving the Thomas Havey Accounting Firm

- A. Charges have been filed with Region 6 in Teamsters Local 250 (Shenango Presbyterian Seniorcare), Case 6-CB-10852, and International Brotherhood of Teamsters, (Shenango Presbyterian Seniorcare), Case 6-CA-10852, alleging that an audited breakdown of chargeable and non-chargeable expenditures under Beck should be rejected on the sole ground that the audit was performed by the Thomas Havey accounting firm because of alleged criminal activity associated with that firm. A Proffer of Facts introduced in United States v. Massey, Criminal Case No. 02-0348 in the United States District Court for the District of Columbia details allegations of certain criminal conduct of a member of the Havey accounting firm in the course of that firm's preparation and submission to the Department of Labor of false LM-2 Reports that conceal and hide from the Iron

Workers Union membership and the Department of Labor the true and full amount of Union expenditures for Union officers' entertainment.

- B. The Havey firm, a nationwide firm, performs audits for many unions of the allocation of chargeable and non-chargeable expenditures required to fulfill Union obligations under Beck. An additional charge was recently filed in Region 8 and more may be filed, alleging that audits of chargeable expenditures done by the Havey accounting firm are unreliable.
- C. If you have or receive such a charge, please fax a copy of the charge to Regional Director Gerald Kobell and Deputy Assistant General Counsel Jane Schnabel. If you already have such a charge, please include in this notification a description of the status of the case. If you have any questions, please contact Director Kobell or DAGC Schnabel.

III. **Beverly Enterprises**

- A. Region 6 will continue to be the lead Region with respect to all newly filed charges against Beverly and any of its subsidiaries. See OM 02-38, "Compliance and Possible Violations by Beverly California Corporation f/k/a Beverly Enterprises with Corporate wide Order in Beverly II and Beverly III." Regions are to advise Region 6 and the Contempt Litigation and Compliance Branch of all arguably meritorious charges at all facilities covered by the corporate wide Judgment in Beverly II and Beverly III prior to taking any action, including approval of a non-Board adjustment.
- B. Deputy Assistant General Counsel Jane Schnabel is coordinating the Beverly cases for Operations.

IV. **Great Atlantic News, L.L.C. a/k/a The Newsgroup, Inc.**

- A. Section 8(a)(1), (3) and (5) charges have been filed in several Regions against Great Atlantic News, L.L.C. a/k/a The Newsgroup, Inc., and against United Magazine Company d/b/a Triangle News Company, Incorporated. The charges arise out of the takeover of United Magazine Company (United) operations by Great Atlantic News (Great Atlantic), Great Atlantic's refusal to recognize and deal with various locals of the International Brotherhood of Teamsters and Great Atlantic's refusal to hire the former employees of United. To date, we have received copies of charges filed in Regions 6, 7 and 8. Region 6, Pittsburgh, will be the lead Region coordinating the handling of these charges.

- B. If similar charges have been filed in your Region, please fax a copy of your charges to Regional Director Kobell, Region 6 and to Deputy Assistant General Counsel Jane Schnabel in Operations. Each Region should complete the investigation of its charges. After the completion of the investigation, copies of agenda minutes and FIRs should be faxed to Region 6 prior to implementation and Regions should not proceed to implement decisions or approve settlements or withdrawals until clearance is received from Regional Director Kobell. Any question about coordination of these cases should be referred to Deputy Assistant General Counsel Schnabel.

V. Greyhound Lines, Inc.

- A. Most of the Greyhound cases relating to the 1990 strike have been completed and are closed. The lead case, Case 30-CA-10681-2, is still open pending distribution of the backpay under the parties' settlement agreement. Region 32 is working to finalize the backpay distribution for all discriminatees pursuant to the settlement. Please refer any compliance questions to Supervisory Compliance Officer Andrew Young in Region 32.
- B. Region 30 will continue to assist other Regions with the interpretation of the agreement and will provide background to those Regions having questions involving related Greyhound cases.
- C. Inquiries related to the 1990 strike cases should be directed to Assistant to the General Counsel Shelley Korch for further referral.

VI. Midwest Air Traffic Control Services

- A. On July 22, 2002, Region 9 was designated to coordinate the charges filed on July 8, 2002 by PATCO against Midwest Air Traffic Control Services, Inc. d/b/a Midwest ATL Services Inc. in Regions 7, 8, 9, 13, 14, 18 and 30. In Operations-Management, Deputy Assistant General Counsel Helen Marsh is coordinating these charges. All charges alleged essentially the same violation, i.e., a change in insurance benefits. Most charges in Regions 7 and 9 also alleged an 8(a)(3) violation and a later filed charge in Region 9 alleged an 8(a)(5) refusal to bargain.
- B. It is our understanding that all the charges alleging a change in insurance benefits, as well as the refusal to bargain charge in Region 9, have been investigated and dismissed. In the event any Region is still processing a charge alleging that the Employer made changes in insurance benefits, please confer with Region 9 before taking final action. It is not necessary for the Regions to confer with Region 9 in the processing of other charges that are pending or may be filed against the Employer.

VII. Overnite Transportation, Inc., and the International Brotherhood of Teamsters

A. Charges or petitions involving Overnite Transportation, Inc.

The International Brotherhood of Teamsters (IBT) announced the end of its strike against Overnite Transportation, Inc. (Overnite) on October 25, 2002. Accordingly, and as the number of charges filed by the IBT against Overnite has decreased, there no longer is a need to coordinate unfair labor practice charges or representation petitions filed by the IBT against Overnite. Consequently, the coordination procedures described in previous instructions, including the “Early Warning Procedures” described in Memorandum OM 96-57 and OM 96-31 and consultations with Region 18 (Minneapolis), are no longer in effect.

Regions may contact Region 18 if there are questions regarding the prior litigation between these parties or for background regarding this labor dispute.

B. Compliance with a settlement stipulation resolving Section 8(b)(4) conduct by the IBT and its Locals

Region 9 requires your assistance in monitoring compliance with a settlement stipulation resolving Section 8(b)(4) conduct by the IBT and its Locals.

Region 9 coordinated Section 8(b)(4) charges filed nationwide against IBT and its Locals and recently approved a settlement stipulation. Although the parties have complied with the Notice posting obligations, the settlement stipulation requires that IBT and its Locals continue to adhere to its terms until May 17, 2004, whenever they engage in picketing that involves Overnite or neutral employers doing business with Overnite.

Specifically, the settlement stipulation provides that IBT and its Locals must designate a “picket captain,” distribute the settlement stipulation and Notice to the pickets, and maintain a comprehensive list of the pickets, including their names, addresses and positions within the unions. The IBT and its Locals are to provide these lists to Region 9 upon the filing of a charge alleging unlawful conduct in connection with future picketing. In addition, the IBT and its Locals are required to take certain affirmative actions to prevent unlawful conduct, including removing the word “strike” from any forms of publicity directed at neutral employers.

Under the terms of the settlement stipulation, the failure of the IBT or its Locals to adhere to its provisions during the relevant period may result in a determination to issue complaint and the subsequent entry of an uncontested Board Order and an enforcing judgment of the appropriate United States Court of Appeals.

Therefore, if charges are filed in your Region that allege conduct by IBT or its Locals that may constitute a violation of the settlement stipulation, please contact Region 9 immediately. Region 9 will continue to coordinate compliance with the settlement stipulation until it expires by its terms in May 2004. In Operations-Management, Deputy Assistant General Counsel Helen Marsh is coordinating these charges.

VIII. Pacific Maritime Association (PMA)/ International Longshore and Warehouse Union (ILWU)

- A. International Longshore and Warehouse Union (ILWU) has filed a charge in Regions 21 against Stevedoring Services of America (SSA), a member of the Pacific Maritime Association (PMA), the West Coast multi-employer association. That charge alleges SSA violated Section 8(a)(1) and (5) by distributing copies of the tentative ILWU-PMA collective bargaining agreement in violation of an understanding between ILWU and PMA, and by soliciting non-unit employees to file unfair labor practice charges attacking the terms of that tentative agreement. In addition, certain employees of SSA have filed Section 8(a)(3) charges in Region 27 against PMA and SSA and a Section 8(b)(1)(A) charge against ILWU. Those charges allege that PMA, SSA and ILWU have discriminated and retaliated against the charging parties because of their non-membership in ILWU.
- B. If charges are filed in your Region against SSA, ILWU, or employer-members of the PMA multi-employer bargaining unit that raise these or related issues, please contact Deputy Assistant General Counsels Charles Posner or Joseph Baniszewski in Operations-Management.

IX. R.J.Corman, Inc.

- A. R.J.Corman, Inc. has filed charges against International Union Operating Engineers, Local 150, alleging that Local 150 has engaged in recognitional picketing in excess of 30 days without filing a petition in violation of Section 8(b)(7)(C). Cases are currently pending in Regions 8 and 13. Region 8 is seeking a nationwide 10(l) against the Union for this unlawful recognitional picketing at various locations.

- B. Region 8 is the lead Region. Please fax a copy to Regional Director Fred Calatrello and Deputy to the Assistant General Counsel Gary Muffley.
- C. Each Region should conduct its own investigation and fax a copy of the FIR or Agenda Minute to Region 8 for clearance before implementing the proposed action. Any question concerning the coordination of these cases should be referred to DAGC Muffley.

X. "Salting" Cases

- A. Unfair labor practice charges have been filed in various Regions alleging Employer refusal to hire applicants who indicate on their applications that they are "paid" or "unpaid union organizers." See Memorandum OM 94-73 for guidance in investigating such "salting" cases.
- B. Deputy to the Assistant General Counsel Hugo Voogd is coordinating these cases. While Regions are no longer required to submit dismissal cases to him for clearance, please continue to send copies of all "salting" charges and complaints to DAGC Voogd. See Memoranda OM 95-2 and OM 95-93.

XI. Sprint/CWA

- A. Region 25 is investigating recently filed charges against the CWA International and its affiliated Local Union, Local 4700, in Evansville, Indiana, alleging that the Unions involved are bargaining in bad faith and are attempting to engage in "coalition" bargaining with other locals throughout the United States. These allegations appear to center on locals in Tennessee/Virginia, North Carolina, Florida, and possibly elsewhere. Similar charges have been recently filed in Region 12 and perhaps other regions.
- B. Region 25 has been designated the coordinating region for these cases. In the event you have charges filed by Sprint against CWA or charges against Sprint, involving this issue, please contact Director Chavarry in Region 25 and provide him with a copy of the charges and information about the status of your investigation. Assistant to the General Counsel Shelley Korch is coordinating these cases in Operations.

XII. USPS Refusal-to-Provide-Information Cases

- A. OM 03-18, dated November 6, 2002, announced new guidelines for handling refusal-to-provide-information charges against the USPS filed by all postal service unions. As set forth in the OM, if a Region concludes that departure from these guidelines is warranted because

of special circumstances, it should first consult with Director Gerald Kobell of Region 6, prior to taking any action.

- B. Region 6 will continue to coordinate and monitor processing of these cases. Region 6 will also consider whether consolidation or clustering of cases for trial or seeking remedial relief on a wider basis is appropriate. In order to maintain oversight of these cases, each Region should send Region 6 copies of dispositions (withdrawal approval letters, settlement agreements, draft complaints, and ALJDs) in all refusal-to-provide-information cases filed against the USPS.

XIII. Wal-Mart Stores, Inc. and Sam's Club

- A. The United Food and Commercial Workers Union has initiated a national effort to organize employees of Wal-Mart Stores, Inc. and Sam's Club throughout the United States. In addition, other unions have attempted to organize other Wal-Mart Stores, Inc. and Sam's Club employees.
- B. Regions are reminded of the outstanding instructions for charges involving Wal-Mart Stores, Inc. and Sam's Club, contained in OM 00-24, issued on April 11, 2000. In particular, until further notice, Regions should take no final action (i.e., issuance of complaint, dismissal, solicitation of withdrawal, or approval of a settlement agreement) regarding Wal-Mart Stores, Inc., or its subsidiaries, including Sam's Club, absent clearance from the Division of Advice.
- C. Regions should continue to forward copies of all unfair labor practice charges and representation cases involving Wal-Mart Stores, Inc, its subsidiaries, including Sam's Club, to the Division of Advice and to the Division of Operations-Management, attention Deputy Assistant General Counsel Joseph J. Baniszewski.

/s/

R. A. S.

cc: NLRBU

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Appendix to OM 03-30

Case Names

<u>Armored Transport, Inc.</u>	DAGC Joseph Baniszewski
<u>Beck Cases Involving the Thomas Havey Accounting Firm</u>	Region 6 and DAGC Jane Schnabel
<u>Beverly Enterprises</u>	Region 6 and DAGC Jane Schnabel
<u>Great Atlantic News, L.L.C. a/k/a The Newsgroup, Inc.</u>	Region 6 and DAGC Jane Schnabel
<u>Greyhound Lines, Inc.</u>	
Compliance Issues	Region 32
Agreement interpretation and background	Region 30
1990 strike cases	AGC Shelley Korch
<u>Midwest Air Traffic Control Services</u>	Region 9 and DAGC Helen Marsh
<u>Overnite Transportation and IBT --</u>	
Compliance with 8(b)(4) settlement stipulation	Region 9 and DAGC Helen Marsh
<u>Pacific Maritime Association (PMA) International Longshore and Warehouse Union (ILWU)</u>	DAGCS Charles Posner or Joe Baniszewski
<u>R.J.Corman, Inc.</u>	Region 8 and DAGC Gary Muffley
<u>Sprint/CWA</u>	Region 25 and AGC Shelley Korch
<u>USPS</u> – Refusal-to-provide- information cases	Region 6 and DAGC Jane Schnabel
<u>Wal-Mart Stores, Inc. and Sam's Club</u>	DAGC Joe Baniszewski

Issues

“Salting” Cases	DAGC Hugo Voogd
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